

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANTHONY AGUILAR,)	CASE NO. 3:09cv1498
)	
Petitioner,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
ROBERT WELCH,)	
)	
Respondent.)	

Before the Court is the Report and Recommendation of Magistrate Judge issued (“R & R”) (**Doc #: 9**). Petitioner has filed a 28 U.S.C. § 2254 petition for writ of habeas corpus seeking relief from his 2003 convictions for breaking and entering, vandalism, and grand theft on two grounds. First, the “severance remedy that the Ohio Supreme Court set forth in *State v. Foster* ... violates the Ex Post Facto Doctrine and Due Process Clause of the United States Constitution.” (**Doc #: 1** at 5.) Second, he was “deprived of his Sixth Amendment right to effective assistance of counsel at his revocation hearing, when his attorney failed to object to imposition of a sentence imposed under unconstitutional sentencing statutes.” (*Id.* at 7.) Petitioner subsequently withdrew this ground for relief. (**Doc #: 8** at 15.)

After reviewing the briefs, the Magistrate Judge issued an R & R concluding that Petitioner failed to demonstrate that the state court decisions concerning his ex post facto and

due process claims involved an unreasonable application of clearly established federal law, as determined by the Supreme Court. Under the relevant statute:

Within *ten days* after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C) (1988) (emphasis added). Here, over one month has elapsed since the R & R was issued, and Petitioner has not filed an objection or a request for an extension to file one.

The failure to timely file written objections to a Magistrate Judge's R & R constitutes a waiver of a de novo determination by the district court of an issue covered in the report. Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), aff'd, 474 U.S. 140 (1985); see United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

The Court has reviewed the Magistrate Judge's thorough and well-written R & R (**Doc #: 9**) and hereby **ADOPTS** it. Accordingly, Petitioner's petition for writ of habeas corpus is **DENIED**.

IT IS SO ORDERED.

/s/ Dan Aaron Polster September 20, 2010
Dan Aaron Polster
United States District Judge